IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 740 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GSRTC

Versus

STATE TRANSPORT KARMACHARI UNION

Appearance:

1. Special Civil Application No. 740 of 2002

MRS VASAVDATTA BHATT for Petitioner No. 1

RULE UNSERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/05/2002

ORAL JUDGEMENT

#. Heard Ms.Vasavadatta Bhatt, learned advocate appearing on behalf of the petitioner Corporation.

#. This Court has issued RULE on 28th January, 2002 and ad-interim relief in terms of Para-7[B] has been granted

on the basis of the fact that in past, the respondent workman has committed 40 defaults as pointed out by learned advocate Ms.Vasavadatta Bhatt before this Court.

#. In the present petition, petitioner Corporation has challenged the award passed by the Industrial Tribunal, Surat in Reference [IT] No.19 of 1996 dated 16th November, 2000, wherein the Tribunal has set aside the order of punishment of stoppage of five increment with cumulative effect with direction to pay all the consequential and incidental benefits to the second party conductor with cost of Rs.500/-. Learned advocate Ms.Vasavadatta Bhatt on behalf of the petitioner Corporation has submitted that the tribunal has committed gross error in reappreciating the oral evidence led in the departmental inquiry while coming to the conclusion. It is further submitted that such reappreciating on the part of the Tribunal is contrary to the law. Ms.Bhatt, learned advocate submits that the Tribunal has analyzed oral evidence led in the departmental inquiry and came to the erroneous conclusion that the finding is baseless and perverse. She has also submitted that no doubt the respondent workman has not recovered the fare from 20 passengers but according to the report, his intention was clearly not to issue the tickets to collect fare at the time when the passengers get down at destination and therefore, the intention was malafide on the part of the respondent workman. Thus, according to her, the intention of the workman was malafide to recover the fare from the passengers with oblique motive while not issuing the tickets and no fare was collected by the respondent workman. It is also pointed out that it was city bus, wherein the bus was checked by the checking staff near the bus stand and therefore, intention of the respondent workman to recover the fare subsequently from the passengers when their destination comes. Therefore, Ms.Bhatt, learned advocate submits that the tribunal has overlooked the intention of the respondent workman and passed the award which is contrary to the law.

#. This Court has issued Rule and granted ad-interim relief in terms of para-7[B]. Notice of RULE though sent for service on the respondent workman but remained unserved and therefore, even in absence of the respondent workman this matter is taken up for final hearing by this Court.

#. I have considered submissions made by learned advocate Ms.Vasavadatta Bhatt on behalf of the petitioner Corporation. The allegation against the respondent workman that on 25th October, 1988 when the respondent

workman was on route in Surat City Bus, at that time, his bus was checked and 20 passengers of difference group were found without tickets and fare was not recovered by the respondent workman and way bill was open at the time of checking. On the basis of the said allegation and misconduct, chargesheet was served on the respondent workman and after completion of the departmental inquiry, the competent authority has imposed punishment by order dtd 12th December, 1988 ordering stoppage of five increments with cumulative effect. This order of punishment was challenged by the respondent workman before the Industrial Tribunal, Surat. Before the Industrial Tribunal, statement of claim was filed by the respondent workman vide Exh.8 and written statement was filed by the petitioner Corporation and thereafter the petitioner Corporation has produced papers of inquiry and other relevant documents vide Exh.14 to 26 which are admitted by the respondent workman. Thereafter, the respondent workman has filed Purshis vide Exh.12 stating therein that he is not challenging the legality and validity of the departmental inquiry and then both the parties have closed their evidence vide Exh.13 and 27. The Tribunal has examined the merits of the matter on the aspects that whether the finding given by the inquiry officer is baseless and perverse or not; whether punishment imposed by the competent authority is harsh or unjustified or not. Thereafter, on appreciated the evidence on record, the tribunal has examined the merits of the matter and ultimately, the tribunal has given cogent reasons in support of its conclusion in para-14. The tribunal has come to the conclusion that 20 passengers found without tickets as per the report Exh.14 from whom fare was not collected by the respondent workman. However, there was some dispute that whether passengers had boarded from which place. According to the conductor workman, passengers had boarded from Hodi Bungalow and Katargam Gate. However, according to the checking inspector, the passengers had boarded from Katargam or from the place and addresses as mentioned in the receipt. The tribunal has considered that the spot statement of passengers were obtained by the checking staff inquiry from which place the passengers had boarded. The tribunal has also considered one more important aspect that two different stories produced before the competent authority viz. one by the conductor and another by the reporter just to mislead the tribunal. However, two make the issue clear from these two stories of conductor and the reporter, passengers were important witnesses but no passenger was examined in the departmental inquiry to find out the truth that from as to what place the passengers had boarded in the bus.

Therefore, in absence of examination of the passengers in departmental inquiry, the competent authority has relied upon evidence of the reporter and disbelieved the defence of the respondent workman. Therefore, considering this evidence on record, the tribunal has come to the conclusion that there was no evidence on record before the inquiry officer that passengers had boarded from which place. The tribunal has also considered one more important aspect that methodology of the inquiry officer or an approach of the inquiry officer to throw the burden on the conductor to prove the charge. On the contrary, it was upon the reporter who has filed report against the workman conductor to prove the fact from which place the passengers had boarded. However, the burden is not discharged or satisfied. This aspect has been considered by the Tribunal in its award in para-14 which is relevant to be referred and therefore, same is reproduced as it is;

"14. On perusal of the report Exh.14, it is clear that 20 passengers were found without tickets and the bus fare was not recovered and it is stated in the report that on looking to the addresses given byt he passengers the statement of the conductor on the spot that all passengers boarded from Hodi Bungalow and Katargam gate as well as far from truth and the conductor is likely to be in collusion with the passengers and should not have given tickets intentionally with an intention to collect the money at the time of getting down from the bus. Now to verify the fact as to from where the passengers boarded the reporter did not take any statement of passengers though they were available and based the report of misconduct on the fact that the addresses are there in receipts and the inquiry officer also based his findings on the same receipts while coming to the conclusion that the passengers boarded from Katargam. It appears reasonable, addresses are there in receipts but address means residential address and do not state from where a passenger boarded. Now it was the corporation who had to prove before, inquiry office that the passengers were boarded from Katargam or from the address given in receipt and thereafter, conductor might be asked to disprove this fact, but inquiry officer, took the procedures otherwise and thought that it was the burden on conductor to prove that the passengers were not boarded from Katargam. It is the passenger himself only which can be best evidence or paper

evidence or sufficient evidence or reasonable evidence to prove the fact where the passengers boarded from and therefore, the very primary fact of constituting any misconduct was not proved by the inquiry officer by any evidence even though the inquiry officer has held that fact proved without any positive evidence before him and therefore, the findings in this respect are baseless and perverse. It may be said that the statements or passengers are not required in each and every case or non examination of passengers in inquiry is not material much. When the foundation of facts constituting any misconduct is requiring the evidence of passengers and when it is not there it should not be taken lightly. Even the reporter has in his examination stated that it was festival "Chandani Padavo" and it is possible that passenger residing in Katargam may come at any place and board the bus from that different place and in cross examination he has replied this way :-

[in vernacular language]

Reply : It may be possible but what I believe, many passengers are permanent residents of Katargam and they could have boarded from Katargarm.

Thus, when he deposes that ;

[in vernacular language]

"They may be permanent commuters, who might have boarded from Katargam."

It is clear that he was not sure and it is his opinion or interference only and inference and opinion is not sufficient to come to the conclusion of proof of any fact and even then inquiry officer held this fact as proved without any evidence. Therefore, clearly the findings are baseless and perverse and in these circumstances, when the misconduct itself is not proved by any evidence in inquiry, order based on such kind of inquiry should not be held illegal and unjust. It is also pertinent to note that the intention of misappropriation of any amount is not misappropriation itself and in this particular matter even the intention is also not proved and therefore, it should not be held

misconduct as proved misconduct it should not be made base for any punishment and therefore, the order of punishment is illegal, unjust and improper and should be set aside and reference deserves to be allowed."

#. Similar question arose before this Apex Court in case of U.P. State Road Transport Corpn. v. Mahesh Kumar Mishra reported in AIR 2000 SC 1151, wherein Head Note [B] reflects that termination of service, Bus Conductor found to have issued tickets to all passengers but they were short distance tickets. Dispute about point at which passengers boarded bus, decided not by examining passengers but by relying only upon report of the Transport Inspector which was signed by delinquent, interference with punishment on ground that it is disproportionate. The relevant observations made in para-6 and 11 are quoted as under :-

"6. It was in the background of these circumstances that the High Court exercised its discretion under Article 226 of the Constitution and interfered with the quantum of punishment inflicted by Disciplinary Authority. It may be that the order of dismissal was held to be valid and proper by the U.S. State Public Services Tribunal but the Tribunal also overlooked the fact that though sufficient evidence could have been collected at the spot to indicate that the passengers to whom tickets were issued by the respondent had boarded the Bus at the "High Court" and not at "Zero Road" but this was not done. It was a Bus plied in the City itself and therefore, the passengers, who were available in the Bus, being local passengers, could have been approached at the spot for stating whether they had boarded the Bust at the "High Court" or at "Zero Road". Learned counsel for the appellants has placed reliance upon an unreported decision of this Court in Civil Appeal No.9754 of 1995, arising out of SLP [C] No.1960 of 1994 [U.P. State Road Transport Corporation v. Om Prakash Pandey], in which interference was made with the punishment inflicted upon the delinquent employee of the Corporation, was set aside. This case is clearly distinguishable on the ground that a number of passengers were allowed to travel without tickets and therefore, the misconduct imputed to the employee was serious. This is not the case here as the respondent had issued tickets to all the passengers, who were found

travelling in the Bus, but the disputes was only with regard to the spot or place at which they had boarded the Bus. To put it differently, the dispute was whether they had boarded the Bus at "Zero Road" or the "High Court". In these circumstances, the High Court was justified in interfering with the quantum of punishment.

11. We have already noticed above that instead of charging a fare of Rs.1.80, the respondent had charged a fare of Rs.1.50 from the passengers. While the appellants maintained that the passengers had boarded the bus at the "High Court" and were to alight at "Manauri", the respondent contended that the passengers had boarded the Bus at "Zero Road" and were to get down at "Manauri" and therefore, he had rightly charged Rs.1.50 from those passengers. This fact could have been established beyond doubt if any of those passengers was examined at the domestic enquiry, or the Transport Inspector, who checked the Bus, could have recorded their statement at the spot. This was not done and the reliance was placed only upon the report of the Transport Inspector which was signed by the respondent also. It was not a case where the passengers were allowed to travel without tickets so that the amount of fare charged from the passengers could be pocketed by him."

#. In view of above observations made by the Apex Court in almost identical facts and circumstance and considering the observations made by the tribunal and reasonings given by the tribunal in support of the conclusion, according to my opinion, the tribunal has rightly held that finding recorded by the inquiry officer is baseless and perverse. The tribunal has not committed any error while passing the impugned award and as such, there seems no jurisdictional error or procedural irregularity committed by the Tribunal, which in any way, calls for interference of this Court under Article 226 and 227 of the Constitution.

Therefore, there is no substance in the petition, which requires rejection and the same is rejected accordingly. Rule discharged. Ad-interim relief, if any, stands vacated. No order as to costs.

Date : 7-5-2002 [H.K.Rathod, J.]

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